

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





77-4120

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\_\_\_\_\_  
No. 77-4120  
\_\_\_\_\_

SIDNEY R. SOLOMON AND BEATRICE SOLOMON,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

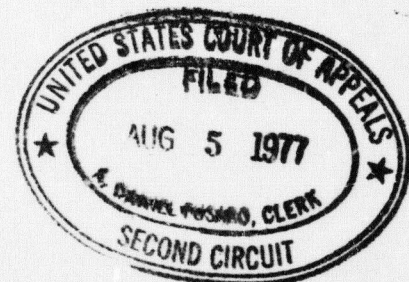
\_\_\_\_\_  
ON APPEAL FROM A DECISION OF  
THE UNITED STATES TAX COURT

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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Washington, D.C. 20006  
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Of Counsel:

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# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. **1281-74**

EDNEY R. SOLOMON AND BEATRICE SOLOMON

857 Fifth Avenue

New York, N.Y. 10021

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

## APPEARANCES FOR PETITIONER:

~~Robert W. Siegel, Plouffe, Volles, Siegel,~~  
 NAME ~~Turner, 24700 Northwestern Highway, Suite 418,~~  
~~Southfield, Michigan 48075 (W/D 1/7/77)~~

## ADDRESS

~~Robert L. Litt, 24700 Northwestern Hwy., Southfield~~  
~~48075 (E/A 5/5/75) (W/D 1/7/77) Rich~~  
 Robert L. Moore, II, (MILLER & CHEVALIER), 1700  
 Pennsylvania Ave., N.W., Wash., D.C. 20006 (E/A  
 1/5/77) John S. Nolan (Same Addr. -- E/A 1/5/77)

| Date<br>Month Day Year | Filings and Proceedings                                   | Action                   | Served         |
|------------------------|-----------------------------------------------------------|--------------------------|----------------|
| Feb. 25, 1974          | PETITION FILED: FEE PAID Feb. 25, 1974                    |                          | Feb. 26, 1974  |
| Feb. 25, 1974          | REQUEST by Petr. for trial at Detroit, Mich.              | GRANTED<br>Feb. 26, 1974 | Feb. 26, 1974  |
| April 26, 1974         | ANSWER by Resp. filed.                                    |                          | April 26, 1974 |
| Nov. 27, 1974          | NOTICE OF TRIAL on Mar. 3, 1975 at Detroit, Mich.         |                          | Nov. 27, 1974  |
| Mar. 3, 1975           | HEARING at Detroit, Michigan before Judge Hall.           |                          |                |
|                        | Joint oral motion for continuance. (See Order)            |                          |                |
| Mar. 3, 1975           | ORDER that the joint oral motion is granted and this      |                          | MAR 20 1975    |
|                        | case is continued generally; further                      |                          |                |
|                        | this                                                      |                          |                |
|                        | ORDERED that a case will be called for report on          |                          |                |
|                        | May 7, 1975 at Washington, D.C.                           |                          |                |
| Mar. 25, 1975          | TRANSCRIPT of March 3, 1975 received.                     |                          |                |
| May 5, 1975            | ENTRY OF APPEARANCE by Robert L. Litt as counsel for Pet. |                          |                |
| May 5, 1975            | MOTION by Petr. to consolidate 1281-74 and 1305-74        | GRANTED<br>May 7, 1975   | MAY 12 1975    |
|                        | for Trial, Briefing and Opinion. (No Obj. Resp.)          |                          |                |
| May 7, 1975            | HEARING at Wash., D.C. before Judge Dawson.               |                          |                |
|                        | Motions by Petrs. in both Dkt. Nos. filed May 5, 1975     |                          |                |
|                        | -74                                                       |                          |                |
|                        | to consolidate Dkt. Nos. 1281/ and 1305-74 - GRANTED.     |                          |                |
|                        | Oral Status report made by Respondent.                    |                          |                |
| May 12, 1975           | TRANSCRIPT of May 7, 1975 received.                       |                          |                |
| June 2, 1975           | TRIAL at Detroit, Mich. before Judge Goffe.               |                          |                |



DOCKET NO. 1281-74

(Continuation)

| SIDNEY R. & BEATRICE SOLOMON |                                                                                                     | PETITIONER                 | PAGE 2      |
|------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------|-------------|
| Date                         | Filings and Proceedings                                                                             | Action                     | Served      |
| Month Day Year               |                                                                                                     |                            |             |
| (min. cont.)                 | ( Case not on calendar - called pursuant to Petr.'s informal request).                              |                            |             |
|                              | Stipulation of Facts filed.                                                                         |                            |             |
|                              | Joint Motion for Leave to Submit Cases under Tax Court                                              |                            |             |
|                              | Rule 122 filed - GRANTED                                                                            |                            | SEP 6 1975  |
|                              | Simultaneous briefs                                                                                 |                            |             |
|                              | ORIGINAL BRIEFS DUE: Sept. 2, 1975                                                                  |                            |             |
|                              | REPLY BRIEFS DUE: Oct. 17, 1975                                                                     |                            |             |
|                              | SUBMITTED TO JUDGE GOFFE                                                                            |                            |             |
| June 19, 1975                | TRANSCRIPT of June 2, 1975 at Detroit, Mich. received.                                              |                            |             |
| Aug. 28, 1975                | BRIEF for Petr. filed.                                                                              |                            | SEP 3 1975  |
| Sept. 2, 1975                | BRIEF for Resp. filed.                                                                              |                            | SEP 3 1975  |
| Oct. 14, 1975                | MOTION by Resp. to extend time to Nov. 17, 1975 within which to file Reply Briefs. (No Obj. Petr.)  | GRANTED<br>Oct. 15, 1975   | OCT 16 1975 |
| Nov. 10, 1975                | REPLY BRIEF for Petr. filed.                                                                        |                            | NOV 18 1975 |
| Nov. 17, 1975                | REPLY BRIEF for Resp. filed.                                                                        |                            | NOV 18 1975 |
| Dec. 6, 1976                 | OPINION filed, Judge Goffe.                                                                         |                            | DEC 6 1976  |
|                              | Decision will be entered under Rule 155.                                                            |                            |             |
| Jan. 5, 1977                 | MOTION by Robert L. Litt for leave to withdraw as counsel of record.                                | GRANTED<br>Jan. 7, 1977    | JAN 11 1977 |
| Jan. 5, 1977                 | ENTRY OF APPEARANCE by Robert L. Moore, II as counsel of record for Petitioner filed.               |                            | JAN 11 1977 |
| Jan. 5, 1977                 | ENTRY OF APPEARANCE by John S. Nolan as counsel of record for Petitioner filed.                     |                            | JAN 11 1977 |
| Jan. 5, 1977                 | MOTION by Petr. for Reconsideration of opinion filed Dec. 6, 1976. (Memorandum in Support Attached) | See Order<br>Jan. 10, 1977 |             |
| Jan. 5, 1977                 | MOTION by Robert W. Siegel to withdraw as counsel of record for Petitioner.                         | GRANTED<br>Jan. 7, 1977    | JAN 11 1977 |

(Cont'd. on page 3)



# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 1281-74

(Continuation)

| SIDNEY R. & BEATRICE SOLOMON |                                                              | PETITIONER | PAGE 3        |
|------------------------------|--------------------------------------------------------------|------------|---------------|
| Date                         | Filings and Proceedings                                      | Action     | Served        |
| Month Day Year               |                                                              |            |               |
| Jan. 10, 1977                | ORDER, that Petr's. motion filed Jan. 5, 1977 is granted     |            | JAN 11 1977   |
|                              | & Opinion filed Dec. 6, 1976 is amended. Further             |            |               |
|                              | ORDER, that opinion in all other respects remains unchanged. |            |               |
| March 25, 1977               | AGREED COMPUTATION filed.                                    |            |               |
| Mar. 28, 1977                | DECISION ENTERED, Judge Goffe.                               |            | Mar. 28, 1977 |
|                              | APPELLATE PROCEEDINGS                                        |            |               |
| Apr. 15, 1977                | MOTION by Petitioners to fix amount of bond filed.           |            | Apr. 19, 1977 |
| Apr. 18, 1977                | ORDER fixing amount of bond at \$65,139.43.                  |            | Apr. 19, 1977 |
| June 6, 1977                 | BOND in the amount of \$65,139.43. with Fidelity and         |            |               |
|                              | Deposit Company of Maryland, as surety, approved and         |            |               |
|                              | ordered filed.                                               |            |               |
| June 6, 1977                 | NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.      |            | June 7, 1977  |
| June 7, 1977                 | NOTICE of Filing with copy of notice of appeal sent to       |            |               |
|                              | Acting Chief Counsel, Mr. Leon G. Wigrizer,                  |            | June 7, 1977  |
| June 7, 1977                 | NOTICE, to parties, of assembling and date for trans-        |            |               |
|                              | mission of record.                                           |            | June 7, 1977  |
| June 20, 1977                | U.S.C.A. 2nd Circuit Civil Appeal Scheduling Order that      |            |               |
|                              | the record be filed in C.A. on or before July 6, 1977        |            |               |
|                              | filed.                                                       |            | June 20, 1977 |
| June 20, 1977                | ORDER that the Clerk is directed to file the Scheduling      |            |               |
|                              | Order this date and said Clerk is directed to transmit       |            |               |
|                              | the record on appeal on or before June 27, 1977.             |            | June 20, 1977 |



UNITED STATES TAX COURT

U. S. TAX COURT  
FILED AT Detroit  
JUN - 2 1975

SIDNEY R. SOLOMON and  
BEATRICE SOLOMON,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 1281-74

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts, except as qualified herein, and all exhibits referred to herein and attached hereto, are incorporated in this stipulation and made a part thereof; subject to the right of either party to object to the admission of such facts and exhibits on the grounds of materiality and relevancy; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. The petitioners, Sidney R. Solomon and Beatrice Solomon, were husband and wife during the calendar year 1971, having their then legal residence at 17637 Hamilton Road, Detroit, Michigan 48203. Petitioners resided at 827 Fifth Avenue, New York, New York 10021,



Dkt. No. 1281-74

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on February 25, 1974, the date of the filing of the petition in this case.

2. The joint U.S. Individual Income Tax Return, Form 1040, filed by petitioners for the taxable year 1971 was prepared on the cash method of accounting and was filed with the Central Service Center, Covington, Kentucky. A photostatic copy of the 1971 income tax return filed by petitioners is attached hereto as Joint Exhibit 1-A.

3. Prior to August 19, 1968, petitioners and Samuel and Doris Katkin were the owners of all of the outstanding capital stock of Quinn Manufacturing Co., a Michigan corporation, having its principal office at 17000 Southfield Road, Allen Park, Michigan 48101 (hereinafter referred to as Quinn). Petitioners each owned twenty-five (25) shares of the capital stock (\$100.00 par value) of Quinn. Quinn owned 300 shares of the outstanding capital stock (\$100.00 par value) of Detroit Bolt and Nut Company, a Michigan corporation, having its principal office at 17000 Southfield Road, Allen Park, Michigan (hereinafter referred to as Detroit).

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4. Prior to August 19, 1968, petitioners and Samuel and Doris Katkin were the owners of all of the outstanding capital stock of Detroit, with the exception of the 300 shares noted in the Stipulation of Facts, paragraph 3 above. The petitioner, Sidney R. Solomon, owned one thousand three hundred ninety-one and one-half (1,391 1/2) shares of capital stock (\$100.00 par value) in Detroit. The peititioner, Beatrice Solomon, owned nine hundred thirteen and one-half (913 1/2) shares of capital stock (\$100.00 par value) in Detroit.

5. On August 19, 1968, petitioners entered into an Acquisition Agreement and Plan of Reorganization (hereinafter referred to as Agreement) with Whittaker Corporation, a California corporation, having its principal office at 9229 Sunset Boulevard, Los Angeles, California (hereinafter referred to as Whittaker). The purpose of the Agreement was to allow Whittaker to acquire from petitioners all of their outstanding capital stock of Detroit and Quinn in exchange for voting stock of Whittaker. A copy of the Agreement is attached hereto as Joint Exhibit 2-3.

6. The transaction, as carried out between petitioners and Whittaker, pursuant to the Agreement of



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August 19, 1968, qualified as a non-taxable corporate reorganization of Detroit and Quinn under Int. Rev. Code of 1954, §368(a)(1)(B).

7. Pursuant to section 5.2 of the Agreement, the petitioner, Sidney R. Solomon, was to receive 6,037 shares of Whittaker's \$5.00 par value preferred stock and such number of shares of Whittaker's \$1.00 par value common stock as had an aggregate market value equal to \$1,373,387.00 on the closing date, but not in excess of 22,890 shares, which number of shares of preferred stock and common stock he received on August 19, 1968.

8. Pursuant to section 5.2 of the Agreement, the petitioner, Beatrice Solomon, was to receive 3,963 shares of Whittaker's \$5.00 par value preferred stock and such number of shares of Whittaker's \$1.00 par value common stock as had an aggregate market value equal to \$901,613.00 on the closing date, but not in excess of 15,027 shares, which number of shares of preferred stock and common stock she received on August 19, 1968.

9. Section 5.3 of the Agreement of August 19, 1968 provided as follows:



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"5.3 Reserve Shares. Because of the difficulty in determining, and the inability of the parties hereto to agree to, the value of the Detroit Stock and the Quinn Stock and the Whittaker Stock to be issued in exchange therefor, and as further consideration for the transfer by the Shareholders to Whittaker of the Detroit Stock and the Quinn Stock and the representations, warranties and agreements of the Shareholders contained in this Agreement, the parties have agreed, subject to the terms and conditions set forth in this Agreement, that shares of Whittaker Common Stock shall be reserved for possible future issuance to the Shareholders as hereinafter set forth.

"On the Closing Date, Whittaker shall set aside and reserve in a Reserve Stock "A" Account for possible future delivery to the Shareholders, in the same proportions as the number of shares of Whittaker's \$5.00 Cumulative Convertible Preferred Stock to be delivered to each of them pursuant to Section 5.2 above, an aggregate of 5,000 additional shares of Whittaker's Common Stock. On the Closing Date Whittaker shall also set aside and reserve in a Reserve Stock "B" Account for possible future delivery to the Shareholders, in the same proportions as the number of shares of Whittaker's \$5.00 Cumulative Convertible Preferred Stock to be delivered to each of them pursuant to Section 5.2 above, an additional number of shares of Whittaker's Common Stock equal in the aggregate to the quotient obtained by dividing \$1,620,619.00 by the Market Value per share established pursuant to Section 5.2 above."

10. Section 5.3.2 of the Agreement of August 19, 1968, provided as follows:



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"5.3.2 Delivery of Shares from the Reserve Stock "B" Account. Whittaker agrees to deliver to the Shareholders as soon as possible and in any event within 30 days after the third anniversary of the Closing Date (the 'Anniversary Date'), such number of shares out of the Reserve Stock "B" Account as shall be required to be delivered pursuant to the following criteria:

(i) For the purpose of this Section 5.3.2, the following terms shall have the following meanings:

'Anniversary Common' shall mean the shares of Whittaker's Common Stock issued at the Closing to the Shareholders pursuant to Section 5.2 above, or upon conversion of Whittaker's \$5.00 Preferred Stock so issued to the Shareholders and still owned by the Shareholders on the Anniversary Date.

'Anniversary Preferred' shall mean the shares of Whittaker's \$5.00 Preferred Stock issued at the Closing to the Shareholders pursuant to Section 5.2 above and still owned by the Shareholders on the Anniversary Date.

'Anniversary Value' shall mean the average Closing Price (as defined in Section 5.2 above) of a share of the security involved for the thirty trading days immediately preceding the Anniversary Date. In the event that the \$5.00 Preferred Stock is not listed on the New York Stock Exchange or the Pacific Coast Stock Exchange during all said thirty trading days, then the Anniversary Value thereof shall be the Anniversary Value of the Common Stock into which such \$5.00 Preferred Stock may be converted on the Anniversary Date, plus \$10.00 per share of \$5.00 Preferred Stock.



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'Closing Value' shall mean the Market Value of the shares involved as determined for the purposes of Section 5.2 above.

(ii) Whittaker shall issue and deliver to the Shareholders such aggregate number of shares, if any, valued at their Anniversary Value, as shall be necessary to increase (x) the Anniversary Value, of the Anniversary Common to 120% of the Closing Value of the Anniversary Common, and (y) the Anniversary Value of the Anniversary Preferred to \$100.00 per share. In the event that the Anniversary Value of the Anniversary Common exceeds 120% of the Closing Value thereof, the aggregate amount of such excess shall be added to the aggregate Anniversary Value of the Anniversary Preferred before determining the number of shares required to be issued to increase said Anniversary Value to \$100.00 per share.

(iii) If during the year preceding the Anniversary Date

(a) a Registration Statement under the Act with respect to Whittaker's Common Stock or \$5.00 Preferred Stock became effective, and

(b) the shareholders were afforded but declined the opportunity of having their shares of Anniversary Common or Anniversary Preferred registered thereunder, and

(c) the price at which the Anniversary Common would have been sold in the course of the sale thereof provided for in said Registration Statement exceeded 120% of the Closing Value of the



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Anniversary Common, or the price at which the Anniversary Preferred would have been sold in the course of the sale thereof provided for in said Registration Statement exceeded \$100.00 per share.

then Whittaker shall be relieved of its obligation under this Section 5.3.2 to issue any shares to increase the Anniversary Value of the Anniversary Common, or to increase the Anniversary Value of the Anniversary Preferred, as the case may be."

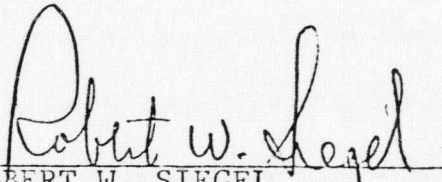
11. On September 27, 1971, pursuant to its obligation under section 5.3.2 of the Agreement, Whittaker delivered twenty-nine thousand seven hundred ninety-seven (29,797) additional shares of \$1.00 par value common stock to petitioner Sidney R. Solomon and nineteen thousand five hundred sixty-one (19,561) additional shares of \$1.00 par value common stock to petitioner Beatrice Solomon. All shares of stock delivered to petitioners on September 27, 1971 were registered under Securities Act of 1933, as amended.

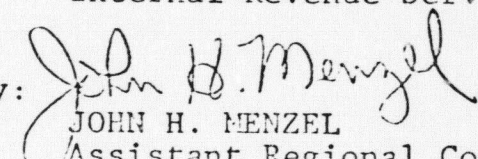
12. The shares of \$1.00 par value common stock issued to petitioners by Whittaker on September 27, 1971 had a value of \$10.125 per share.

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13. The Agreement dated August 19, 1968 did not provide for the payment of interest by Whittaker to petitioners.

  
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67 T. C. No. 30

UNITED STATES TAX COURT

SIDNEY R. SOLOMON AND BEATRICE SOLOMON, Petitioners v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent

SAMUEL KATKIN AND DORIS KATKIN, Petitioners v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 1281-74,  
1305-74.

Filed December 6, 1976.

Petitioners exchanged their stock in Q and D for voting stock of W pursuant to written agreements in a tax-free reorganization under sections 354(a)(1) and 368(a)(1)(B), I.R.C. 1954. The agreements provided for the issuance of additional shares of W if the value of the W shares initially received in exchange was less than a designated amount on a future date. The maximum number of additional shares which might be received was to be placed in a special reserve account. No provision was made for the payment of interest on the additional shares. The Commissioner imputed interest income to petitioners pursuant to section 483 on the receipt of the additional shares. Held: Section 483 is applicable to deferred payments received in tax-free reorganizations. Held further: The existence of deferred payments without provision for adequate interest, not the manner in which deferred payments are computed, is determinative of the applicability of section 483. Held further: Rev. Rul. 70-120, 1970-1 C.B. 124, distinguished.

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Robert L. Litt, Robert W. Siegel and Marcus Plotkin,  
for the petitioners.

Peter M. Ritteman, for the respondent.

## OPINION

GOFFE, Judge: The Commissioner determined the following deficiencies in petitioners' Federal income taxes for the taxable year 1971:

| <u>Docket No.</u> | <u>Petitioners</u>           | <u>Deficiency</u> |
|-------------------|------------------------------|-------------------|
| 1281-74           | Sidney R. & Beatrice Solomon | \$46,492.42       |
| 1305-74           | Samuel & Doris Katkin        | 15,254.17         |

The cases were consolidated for purposes of trial, briefing, and opinion. Concessions having been made, the sole issue for decision is whether shares received more than three years after the initial exchange in a non-taxable corporate reorganization pursuant to sections 354(a)(1)<sup>1</sup> and 368(a)(1)(B) constitute payments subject to the imputed interest provisions of section 483.

The consolidated cases were submitted under Rule 122, Tax Court Rules of Practice and Procedure. All of the facts have been stipulated. The stipulation of facts and exhibits attached thereto are incorporated by this

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<sup>1</sup>All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise noted.



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reference. Only the facts necessary for an understanding of our opinion will be summarized below.

Petitioners Sidney R. and Beatrice Solomon, husband and wife, resided in New York City, New York, at the time they filed their petition in this proceeding. They filed a joint Federal income tax return for the taxable year 1971 with the Internal Revenue Service Center, Covington, Kentucky.

Petitioners Samuel and Doris Katkin, husband and wife, resided in Farmington, Michigan, at the time they filed their petition. They also filed a joint Federal income tax return for the taxable year 1971 with the Internal Revenue Service Center, Covington, Kentucky.

Prior to August 19, 1968, Mr. and Mrs. Solomon and Mr. and Mrs. Katkin were owners of all the outstanding capital stock of Quinn Manufacturing Co. (hereinafter Quinn), a Michigan corporation, having its principal place of business in Allen Park, Michigan. Each petitioner owned 25 shares of the capital stock of Quinn. Quinn owned 300 shares of the outstanding capital stock of Detroit Bolt and Nut Co. (hereinafter Detroit), a Michigan corporation having its principal office in Allen Park, Michigan. The remainder of the outstanding capital stock of Detroit was owned by petitioners in the following amounts:



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| <u>Owner</u>      | <u>No. of<br/>Shares</u> |
|-------------------|--------------------------|
| Sidney R. Solomon | 1,391.5                  |
| Beatrice Solomon  | 931.5                    |
| Samuel Katkin     | 1,522.0                  |
| Doris Katkin      | 783.0                    |

On August 19, 1968, Sidney and Beatrice Solomon entered into an Acquisition Agreement and Plan of Reorganization with Whittaker Corp. (hereinafter Whittaker), a California corporation having its principal office in Los Angeles, California. The agreement provided for the acquisition of all of the stock of Quinn and Detroit owned by Mr. and Mrs. Solomon in exchange for voting stock of Whittaker. In consideration for the transfer of his shares in Quinn and Detroit, Sidney Solomon was to receive 6,037 shares of Whittaker's \$5 par value preferred stock and such number of its shares of common stock as had an aggregate fair market value of \$1,373,387, but not in excess of 22,890 shares. In exchange for the transfer of her shares in the two corporations, Beatrice Solomon was to receive 3,963 shares of Whittaker's \$5 par value preferred stock and such number of shares of its common stock as had a fair market value of \$901,613, but not in excess of 15,027 shares. On August 19, 1968, Mr. and Mrs. Solomon received the designated number of preferred shares and the maximum number of common shares that could initially be received under



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the agreement. The shares of stock received were subject to substantial restrictions on transferability. In addition, because of the difficulty in valuing the shares exchanged and as further consideration to petitioners, the agreement provided for the issuance of additional shares if the value of the common stock received and still retained by petitioners on August 19, 1971, was less than 120 percent of its value on August 19, 1968, or if the value of the preferred shares received was less than \$100 per share. The agreement further provided that the maximum number of shares which might be issued be placed in a reserve account to be established by Whittaker for possible future delivery. The agreement did not provide for the payment of interest on such additional shares. On September 27, 1971, pursuant to its obligations under the agreement, Whittaker issued 29,797 additional shares of its common stock to Sidney Solomon and 19,561 shares to Beatrice Solomon. The shares were registered under the Securities Act of 1933, as amended, and had a value of \$10.125 per share.

On August 19, 1968, Samuel and Doris Katkin also entered into an Acquisition Agreement and Plan of Reorganization with Whittaker providing for the exchange

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of all of their stock in Quinn and Detroit for voting stock of Whittaker. Under the terms of the agreement, Samuel Katkin was to receive such number of shares of common stock of Whittaker as had a fair market value of \$1,039,977, up to a maximum of 17,333 shares; Doris Katkin was to receive such number of shares of common stock as had a fair market value of \$535,023, but not in excess of 8,917 shares. On August 19, 1968, both petitioners received the maximum number of shares which could be initially received under the agreement. The shares, like those issued to Mr. and Mrs. Solomon, were subject to substantial restrictions on transferability. The agreement also provided for the issuance of additional shares if the value of the shares retained by petitioners on August 19, 1971, was less than 120 percent of their value on August 19, 1968. The maximum number of shares which might be issued was to be placed in a special reserve account. No provision was made for the payment of interest on the additional shares. On September 27, 1971, Whittaker issued 15,671 additional shares to Samuel Katkin and 8,066 additional shares to Doris Katkin. The shares were registered under the Securities Act of 1933, as amended, and had a value of \$10.125 per share.



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The exchanges of stock between petitioners and Whittaker qualified as a tax-free reorganization under sections 354(a)(1)<sup>2</sup> and 368(a)(1)(B).<sup>3</sup>

The Commissioner, in his statutory notices of deficiency, determined that petitioners received interest income pursuant to section 483 on the receipt of the additional Whittaker shares in 1971.

Section 483<sup>4</sup> was added to the Internal Revenue Code in 1964 to correct a practice whereby a seller

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<sup>2</sup>SEC. 354. EXCHANGES OF STOCK AND SECURITIES IN CERTAIN REORGANIZATIONS.

(a) GENERAL RULE.--

(1) In General.--No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

<sup>3</sup>SEC. 368. DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS.

(a) REORGANIZATION.--

(1) In General.--For purposes of parts I and II and this part, the term "reorganization" means--

\* \* \*

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

<sup>4</sup>SEC. 483. INTEREST ON CERTAIN DEFERRED PAYMENTS.

(a) AMOUNT CONSTITUTING INTEREST.--For purposes of this title, in the case of any contract for the sale or exchange of property

continued



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of property on the installment basis was able to convert what would otherwise constitute interest income into capital gain by inflating the purchase price and not providing for the payment of interest on the deferred payments. H. Rept. No. 749, 88th Cong., 1st Sess. (1963), p. 72. In general, section 483 requires that in

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Footnote 4 - continued.

there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract.

(b) TOTAL UNSTATED INTEREST.--For purposes of this section, the term "total unstated interest" means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of--

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of paragraph (2), the present value of a payment shall be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary or his delegate. Such regulations shall provide for discounting on the basis of 6-month brackets and shall provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange is an amount equal to 100 percent of such payment.

(c) PAYMENTS TO WHICH SECTION APPLIES.--

(1) In General.--Except as provided in subsection (f), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract--

(A) under which some or all of the payments are due more than one year after the date of such sale or exchange, and

continued



- 9 -

the case of a contract for the sale or exchange of property under which deferred payments are due more than

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Footnote 4 - continued.

(B) under which, using a rate provided by regulations prescribed by the Secretary or his delegate for purposes of this subparagraph, there is total unstated interest.

Any rate prescribed for determining whether there is total unstated interest for purposes of subparagraph (B) shall be at least one percentage point lower than the rate prescribed for purposes of subsection (b)(2).

(2) Treatment of Evidence of Indebtedness.--For purposes of this section, an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness shall be treated as due under the contract for the sale or exchange.

(d) PAYMENTS THAT ARE INDEFINITE AS TO TIME, LIABILITY OR AMOUNT.--In the case of a contract for the sale or exchange of property under which the liability for, or the amount or due date of, any portion of a payment cannot be determined at the time of the sale or exchange, this section shall be separately applied to such portion as if it (and any amount of interest attributable to such portion) were the only payments due under the contract; and such determinations of liability, amount, and due date shall be made at the time payment of such portion is made.

(e) CHANGE IN TERMS OF CONTRACT.--If the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property is changed, the "total unstated interest" under the contract shall be recomputed and allocated (with adjustment for prior interest (including unstated interest) payments) under regulations prescribed by the Secretary or his delegate.

(f) EXCEPTIONS AND LIMITATIONS.--

(1) Sales Price of \$3,000 or Less.--This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed \$3,000.

(2) Carrying Charges.--In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

continued

- 10 -

1 year from the date of such sale or exchange and which provides for either no interest or interest payments at a rate below that specified in the Treasury Regulations, a portion of each payment received more than six months after the date of sale or exchange be treated as interest.

Petitioners do not contend that the shares transferred in 1971 are not "payments." Moreover, the regulations specifically include stock within the meaning of the term "payments," sec. 1.483-1(b)(1)(ii), Income Tax Regs., a term which may have different meanings when used in different Code sections. See, Don E. Williams Co., 62 T.C. 166, 169, affd. 527 F.2d 649 (7th Cir. 1975), cert. granted 44 U.S.L.W. 3702 (June 7, 1976).

Petitioners first maintain that section 483 does not apply to deferred payments received in transactions

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Footnote 4 - continued.

(3) Treatment of Seller.--In the case of the seller, the tax treatment of any amounts received on account of the sale or exchange of property shall be made without regard to this section if no part of any gain on such sale or exchange would be considered as gain from the sale or exchange of a capital asset or property described in section 1231.

(4) Sales or Exchanges of Patents.--This section shall not apply to any payments made pursuant to a transfer described in section 1235(a) (relating to sale or exchange of patents).

(5) Annuities.--This section shall not apply to any amount the liability for which depends in whole or in part on the life expectancy of one or more individuals and which constitutes an amount received as an annuity to which section 72 applies.



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qualifying for non-recognition treatment under sections 354(a)(1) and 368(a)(1). Section 483(c)(1) provides in pertinent part as follows:

(c) PAYMENTS TO WHICH SECTION APPLIES.--

(1) In General.--Except as provided in subsection (f), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange  
\* \* \* [Emphasis added.]

Thus, the plain wording of the statute makes it clear that the provision is applicable to any deferred payment received on the exchange of property under a contract in which no interest or inadequate interest is provided, irrespective of whether gain or loss is recognized on the exchange, except in those five instances specified in subsection (f). Despite the fact that tax-free reorganizations are not mentioned in the legislative history of the statute, we are unable to disregard, as petitioners would have us do, the express language of the provision and the failure of Congress to include such exchanges within the list of exceptions to the statute. Had Congress intended to except deferred payments received in tax-free reorganizations from the imputed interest provisions of section 483, it certainly would have done so in subsection (f). See Sutherland, Statutes and Statutory Construction, 4th ed., v. 2A, sec. 47.23 (1973).



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In addition, our conclusion that section 483 is applicable to deferred payments received in a tax-free corporate reorganization is supported by the legislative history which indicates that Congress intended that the rules of section 483 be applicable for all purposes of the Code.<sup>5</sup> Although petitioners do not specifically challenge the validity of any of the Treasury Regulations under section 483, their position is tantamount to contending that section 1.483-1(b)(6), example (7), Income Tax Regs., is invalid.

In the alternative, petitioners contend that the application of section 483 in the context of corporate reorganizations is limited to contingent "earn-out"<sup>6</sup> situations and that the provision does not apply to deferred payments based upon the future value of the stock of the acquiring corporation. In support of their contention, petitioners merely point to the fact that the committee reports<sup>7</sup> and the Treasury Regulations<sup>8</sup> only

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<sup>5</sup> H. Rept. No. 749, 88th Cong., 1st Sess. (1963), p. A84, provides in part as follows:

Section 483(a) provides the general rule that part of each payment (under a contract for the sale or exchange of property) to which section 483 applies is to be treated as interest for all purposes of the code. [Emphasis added.]

<sup>6</sup>An "earn-out" provides for the issuance or delivery of additional shares of stock at designated dates after the initial exchange of stock based upon the success of the acquired corporation.

<sup>7</sup>H. Rept. No. 749, 88th Cong., 1st Sess. (1963), p. 72; S. Rept. No. 830, 88th Cong., 2d Sess. (1964), p. 103.

<sup>8</sup>Sec. 1.483-1(b)(6), Treas. Regs., examples 7 and 8.



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contain examples of "earn-out" situations. We are unwilling to hold that the application of section 483 is so limited. Petitioners' argument is not supported by the language of the statute, the legislative history, or the Treasury Regulations. The examples in the committee reports and Treasury Regulations are merely illustrative; they do not purport to limit the application of section 483 to situations in which deferred payments are based on the earnings of the acquired corporation. The existence of deferred payments without provision for adequate interest, not the manner in which the deferred payments are computed, is determinative of the applicability of section 483.<sup>9</sup>

Petitioners' final contention is that the "reserve stock accounts" which Whittaker was required to establish pursuant to the terms of the reorganization agreements are sufficiently analogous to the escrow arrangement described in Rev. Rul. 70-120, 1970-1 C.B. 124, so as to require that the additional shares be treated as having been transferred to petitioners on the effective date of the reorganization. In Rev. Rul. 70-120 a designated number of the shares of common stock received by the shareholders of the transferor corporation in a corporate merger was immediately deposited in escrow with a bank.

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<sup>9</sup>We express no opinion as to the validity or applicability of Rev. Rul. 73-298, 1973-2 C.B. 173.

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The shares so deposited were issued in the names of the shareholders of the transferor corporation who were, during the period held in escrow, entitled to vote the escrowed shares as well as receive all dividends paid. A portion of such shares was subject to retransfer in the event the earnings of the business formerly conducted by the transferor corporation did not maintain a specified level for the taxable year of the merger and the two succeeding years. To the extent that the specified earning levels were met, the shares held in escrow were to be released and delivered to the shareholders in each of the three taxable years according to the terms of the escrow agreement. The ruling held that all of the shares placed in escrow were transferred on the effective date of the reorganization and, therefore, section 483 was not applicable. In the instant case, petitioners were not entitled to vote the contingent shares or receive any dividends paid on such shares; nor was a valid escrow created.<sup>10</sup> Accordingly, we conclude that the reserve stock accounts are not sufficiently similar to the escrow arrangement described in Rev. Rul. 70-120 to come within the ambit of the ruling. However,

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<sup>10</sup> A deposit with a third person not a party to the agreement is necessary for the creation of a valid escrow. 30A, C.J.S., Escrows, sec. 4-7 (1965).



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we express no opinion as to the validity of the revenue ruling in question as petitioners have not sought to litigate its correctness and it is, therefore, unnecessary for us to examine its validity.

Accordingly, based on the foregoing, we hold that the contingent payments of Whittaker stock received by petitioners in 1971 are subject to the imputed interest provisions of section 483.

Decisions will be entered  
under Rule 155.

Petitioners, )  
UNITED STATES  
TAX COURT

Docket No. 1281-74

Respondent. )

Petitioners, )

Docket No. 1305-74

Respondent. )

PETITIONERS' MOTION FOR  
RECONSIDERATION OF OPINION

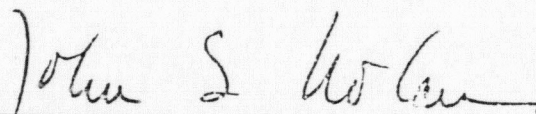
Petitioners respectfully move that this Court reconsider its opinion in the above-entitled case. The petitioners submit that the Court has failed to deal with the real issue in the case. The Court has assumed, in effect, that the petitioners conceded that the subsequent distribution of Whittaker shares was a "payment" as described in §483. To the contrary, the petitioners contended vigorously that the issuance of stock pursuant to the provisions of the merger agreement between the petitioners and the Whittaker Corporation was not a "payment". This is the



- 2 -

central issue in this case. The petitioners request a reconsideration of the opinion in light of the authorities contained in the attached memorandum in support of this motion.

WHEREFORE, petitioners respectfully request that this motion be granted.



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UNITED STATES TAX COURT  
RECEIVED  
DOCKET ROOM

SIDNEY R. SOLOMON and  
BEATRICE SOLOMON,

1977 JAN 5 AM 10 26

Petitioners, UNITED STATES  
TAX COURT

v.

Docket No. 1281-74

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

SAMUEL KATKIN and  
DORIS KATKIN,

Petitioners,

v.

Docket No. 1305-74

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MEMORANDUM IN SUPPORT OF  
PETITIONERS' MOTION FOR  
RECONSIDERATION OF OPINION

The petitioners have consistently contended that the receipt of stock pursuant to the merger agreement between the petitioners and Whittaker Corporation was not a "payment" within the meaning of section 483. For example, the petitioners states in their opening brief --

\* \* \* their receipt of the additional shares of Whittaker stock pursuant to their right contained in the plan of reorganization did not constitute a "payment" with respect to which interest would or should be imputed



- 2 -

under Int. Rev. Code of 1954 Section 483; that their receipt of the additional shares of stock, lapse (if any) of the contractual and Securities Act of 1933 restrictions of transferability relative to the initial shares of stock, lapse of any restrictions that were to have attached to any additional shares of stock, and the "reserve stock accounts" requirement did not constitute or give rise to "payments" with respect to which interest would or should be imputed under Int. Rev. Code of 1954 Section 483. (Br. at p. 19).

The petitioners made further assertions to this effect at page 25 of their brief.

In spite of these unequivocal assertions, the Court stated in its opinion that "Petitioners do not contend that the shares transferred in 1971 are not 'payments'" (Opinion at p. 10). The petitioners submit that this court, in erroneously assuming that the petitioners had conceded this crucial issue, committed a critical error and should therefore reconsider its opinion.

Because of the significance of this issue, this memorandum is submitted to clarify and explain the petitioners' position. As this Court recently indicated in Estate of Russell G. Woodward, 64 T.C. 999 (1975), the moving party in a motion for the reconsideration of an opinion may clarify its position and bring specific legal theories to the Court's attention.

So-called "contingent stock reorganizations", in which shareholders of the acquired corporation exchange their stock for a fixed number of shares of the acquiring corporation plus a contractual right to an additional number of shares

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within a short time period, have frequently been utilized as in the present case to resolve valuation uncertainties. As in the present case, there is in effect a maximum number and minimum number of total shares to be received, the number of additional shares to be distributed subsequent to the original exchange being fixed by a formula. Here the formula was designed to assure that the value of the Whittaker stock delivered initially in 1968 would be at a specified level three years later in 1971, and if it was not, the additional shares, up to a maximum number, were to be delivered in 1971 to provide this value.

Such a contingent stock transaction may constitute a "reorganization" as defined in §368 of the Code, as it did in the present case (Opinion at p. 7), subjecting it to an explicit and comprehensive set of tax consequences. The parties recognize no gain or loss upon the exchange of stock (§354(a)) and their basis (§358(a)) and holding period (§1223) in the stock surrendered carry over to the stock received.

This pattern of tax treatment also applies to contractual rights to additional stock to be issued at a later date. No gain or loss is recognized upon the receipt of such a right or upon the subsequent issuance of stock pursuant to that right. This follows from the fact that such contractual rights are in substance nothing more than the stock that they represent. The right represents an equity interest identical to that which would be represented by the stock itself. For



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this reason, such contractual rights are treated, for tax purposes, as "stock" and not as "other property". James C. Hamrick, 43 T.C. 21 (1964), acq. 1966-1 C.B. 2; Carlberg v. United States, 281 F.2d 507 (8th Cir. 1960); Rev. Rul. 67-90, 1967-1 C.B. 79; Rev. Rul. 66-112, 1966-1 C.B. 68.

The stipulations and the findings in this case confirm that this pattern of tax treatment applies to the contractual right received by the petitioners and the subsequent issuance of stock pursuant thereto. The respondent stipulated (Respondent's Brief at p. 16), and this Court found (Opinion at p. 7) that the entire transaction qualified as a tax-free reorganization under §368(a)(1)(B) of the Code. As provided in §354(a), the petitioners recognized no gain or loss on the exchange. It follows that the contractual right which was received at the time of the merger, as well as the additional stock which it represented, constituted "stock" of Whittaker for Federal income tax purposes, since only "stock or securities" may be received under §354 of the Code without recognition of gain or loss (and "securities" are not involved in the present case).

In view of this nature and character of the transaction for Federal income tax purposes, the distribution of additional Whittaker shares in 1971 was not a "payment". It was not an action separate from the reorganization exchange itself. At the time of the reorganization exchange, the petitioners received the right to these Whittaker shares -- the

- 5 -

right constituted part of the "stock" they received, part of their continuing equity interest in Whittaker. The distribution of the additional shares in 1971 after the precise number had become fixed was merely the substitution of one indicia of equity ownership in Whittaker for another. No gain was recognized in 1971 at the time of such distribution. There was no exchange, no taxable event; there was merely an issuance of stock certificates to complete the indicia of equity ownership in Whittaker that had been obtained at the time of the original exchange. That equity interest had in effect been measured in terms of value of an interest in Whittaker, within specified limits, rather than in terms of number of shares, and the 1971 distribution did no more than provide the formal evidence of that ownership interest. It was not a "payment". If there had been such a separate step, a "payment", the 1971 distribution of additional shares would necessarily have been a taxable event.

Because the contractual right to additional stock was, for tax purposes, treated as the stock itself, it could not have been an "evidence of indebtedness" as described in §483(c)(2). (Section 483 will apply, in the present case, only if the contractual right was such an "evidence of indebtedness".) If the contractual right had been an "evidence of indebtedness", it would not have been "stock" of Whittaker received in the merger, but would have been "other property", resulting in recognition of gain. The stipulations of the



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parties and the findings of the Court, however, specifically confirm that the contractual right was not "other property".

This Court has suggested that the statement in Reg. §1.483-1(b)(1)(ii) that "for purposes of section 483, a payment may be made in cash, stock or securities, or other property. . ." supports the position that the additional stock constitutes a payment for purposes of §483. This, however, is not the meaning of that regulation. That regulation merely provides that a payment may be made in any medium; it does not provide that any receipt of stock is a payment. Rather, it presumes that the transaction in question constitutes a payment. The regulation simply does not reach the threshold determination whether or not there has been a "payment" in this case.

Characterizing the issuance of additional shares as a payment disregards the essential nature of such contingent arrangements. It rejects the fundamental nature and character of these contingent stock reorganizations for Federal income tax purposes as set forth in the cases and rulings previously cited. It is inconsistent with the Code provisions applicable to corporate reorganizations. Under such circumstances, well-recognized rules of statutory construction preclude the application of §483 to the transaction at issue in this case.

Section 483 does not override the long-standing pattern of tax treatment of "reorganizations" under the Code. As

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previously stated, the parties to a qualifying reorganization recognize no gain or loss. Their basis in their original holdings carries over into their new stock, including any stock received at a later date by virtue of a contractual right received during the reorganization. Moreover, by virtue of §1223, the parties are considered for tax purposes to have held all of the stock received in the reorganization from the time they first acquired the stock surrendered in the transaction. This pattern of tax treatment is an acknowledgment of the economic realities of corporate reorganizations. The parties to qualifying reorganizations have not actually terminated their interest in the participating corporations, but have merely modified the form of their ownership interest. Indeed, a continuity of interest is a prerequisite to the enjoyment of the tax benefits of nonrecognition.

Characterizing the issuance of additional shares as a "payment" for purposes of §483 simply cannot be reconciled with the explicit and comprehensive treatment of the transaction under the "reorganization" provisions. Section 483 presupposes a delayed payment, while stock received pursuant to a "reorganization", including stock received at a later date, is considered for tax purposes to have been held without interruption by reason of the reorganization. Section 483 requires the recognition of income, on the assumption there has been a "payment" in a taxable exchange, while the reorganization provisions specifically provide that no gain or loss is



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to be recognized because there is a continuation of equity ownership, which does not call for taxation.

Under such circumstances, it is a well-recognized canon of statutory construction that when a statute of general application, such as §483, conflicts with Code sections providing a specific pattern of tax treatment for a limited class of transactions, such as that provided for corporate reorganizations, the general statute must yield to the specific provisions. Bulova Watch Co. v. United States, 365 U.S. 753 (1961).

As demonstrated by Fox v. United States, 74-1 U.S.T.C. ¶9358 (E.D. Pa. 1974), aff'd 510 F.2d 1330 (3rd Cir. 1975), §483 must be interpreted in light of this principle. In that case, the government argued and the Third Circuit held that §483 could not be applied to create an element of unstated interest in an alimony payment which was governed by the more specific provisions of §§71 and 215. The respondent recently took the same position in Rev. Rul. 76-146, 1976-16 I.R.B. 11, citing the Fox case as supporting authority. It is also well recognized that the reorganization provisions are among the most specific in the Code, and that they take precedence when a Code section of general applicability could otherwise be applied to a transaction which qualifies as a reorganization. Eastern Color Printing Co., 63 T.C. 27 (1974), acq. 1975-2 C.B. 1; Movielab, Inc. v. United States, 204 Ct. Cl. 6, 494 F.2d 693 (1974), judgment entered 503 F.2d 1406 (1974); Rev. Rul. 75-561, 1975-2 C.B. 129. Here, too, the conflict between §483 and the reorganization provisions should be resolved in favor of the specific Code provisions governing corporate reorganizations.



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This Court resolved any possible statutory inconsistencies by referring to the list of exceptions contained in subsection (f), concluding that any situation not specifically excepted from §483 by subsection (f) is governed by §483. This approach, however, presumes that a corporate reorganization falls within the general rule of §483 in the first place, a presumption which has been shown to be in error.

Moreover, this conclusion is contrary to the consistent practice of Congress in drafting tax statutes. When Congress intends that a newly-adopted section of the Code take precedence over other Code sections, including the reorganizations provisions, it enacts a specific provision to that effect. For example, in §1250, which was added by the same revenue bill that enacted §483, a special subsection was included which provided that: "This section shall apply notwithstanding any other provision of this subtitle." See also the similar language in §1245(d), added just two years before §483. This is a well-recognized method of drafting provisions of the Internal Revenue Code when it is intended that they are to override other applicable provisions of the Code, such as the nonrecognition provisions. By failing to make an exception for qualifying corporate reorganizations in §483(f), Congress did not manifest an intent to override the reorganization provisions. Rather, in failing to provide specifically that §483 governs "notwithstanding" the corporate reorganization provisions, Congress



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manifested an intent that the nonrecognition provisions applicable to corporate reorganizations were not to be overridden by §483.

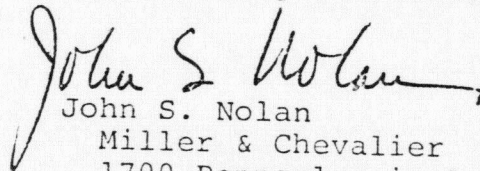
Finally, the Court's conclusion is irreconcilable with the decision of the Third Circuit in the Fox case and the respondent's own position in Rev. Rul. 76-146. These authorities provide that no interest is to be imputed to alimony payments the tax treatment of which is governed by §§71 and 215. Under this Court's reasoning, however, such a conclusion could not have been reached since §483(f) contains no exception for alimony payments. The interpretation of §483, advanced in both the Fox case and Rev. Rul. 76-146, is sensible and consistent with the intent of Congress in enacting that provision and should be followed in this case.

In the last analysis, the distribution of the additional shares pursuant to the terms of the Agreement no more involves a "payment of interest" than does the payment of alimony in the Fox case. The number of additional shares was based solely on the subsequent value of the Whittaker stock and had nothing to do with the length of the delay before their issuance. The parties did not contemplate an interest element; they were merely resolving an uncertainty over the anticipated value of the Whittaker shares. As previously stated, the interest obtained by the petitioners in Whittaker was, in effect, measured in terms of value, not number of shares, and the 1971 distribution of additional stock certificates was merely the evidence of that continuing equity interest in Whittaker which they had owned from the outset.

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For the reasons outlined above, the petitioners request that its motion be granted and that this Court reconsider its opinion in this case.

Respectfully submitted,

  
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UNITED STATES TAX COURT  
Washington

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| SIDNEY R. SOLOMON and             | ) |                      |
| BEATRICE SOLOMON, ET AL,          | ) |                      |
| Petitioners,                      | ) |                      |
| v.                                | ) | Docket Nos. 1281-74, |
|                                   | ) | 1305-74              |
| COMMISSIONER OF INTERNAL REVENUE, | ) |                      |
| Respondent.                       | ) |                      |

O R D E R

On January 5, 1977, counsel for petitioners filed with the Court a Motion for Reconsideration of Opinion. The premises considered, it is

ORDERED: That petitioners' motion for reconsideration is hereby granted and the OPINION filed on December 6, 1976, is amended by substituting the first full paragraph on Page 10 with the following:

Petitioners do not contend that the shares transferred in 1971 are not payments for their stock, but they, instead, contend that the shares transferred to them are not "payments" within the meaning of section 483. Moreover, the regulations specifically include stock within the meaning of the term "payments," sec. 1.483-1 (b)(1)(ii), Income Tax Regs., a term which may have different meanings when used in different Code sections. See, Don E. Williams Co., 62 T.C. 166, 169, affd. 527 F.2d 649 (7th Cir. 1975), cert. granted 44 U.S.L.W. 3702 (June 7, 1976).

It is further,

ORDERED: That the opinion of this Court in all other respects remains unchanged.

*William A. Goffe*  
Judge

Dated: Washington, D.C.  
January 10, 1977

UNITED STATES TAX COURT

SIDNEY R. SOLOMON, and  
BEATRICE SOLOMON,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 1281-74

### DECISION

Pursuant to the opinion of the Court filed on December 6, 1976, as modified by the order entered January 10, 1977, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1971 in the amount of \$42,939.64.

(signed) William A. Goffe

Judge.

Entered: MAR 28 1977

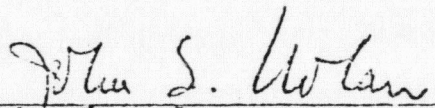
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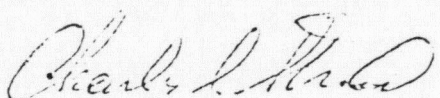
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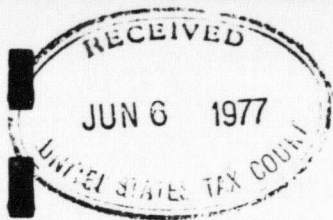
It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision without prejudice to the right of either party to contest the correctness of the decision entered herein.

  
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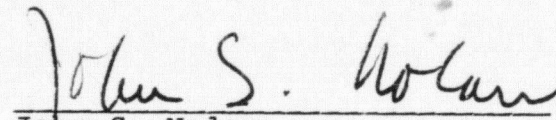
## UNITED STATES TAX COURT

## NOTICE OF APPEAL



Certificate of Service

I hereby certify that one copy of this Appendix was served on F. Arnold Heller, attorney for the Appellee on August 4, 1977. Service was accomplished by personal delivery.

  
John S. Nolan